

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
DEC 28 1998

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL T. JOHNSON,

Defendant.

No. CIV-98-1455 JC/RJD
CR-96-228 JC

ENTERED ON DOCKET

12/29/98

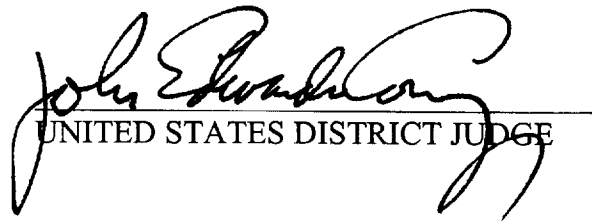
MEMORANDUM OPINION AND ORDER

This matter is before the Court *sua sponte* to consider Defendant's motion for sentence reduction under 18 U.S.C. § 3582(c)(2) filed November 13, 1998. Defendant pled guilty to one count of an indictment for violating 21 U.S.C. § 841(b)(1)(B) and was sentenced on December 16, 1996. He was given a prison sentence of 97 months under the United States Sentencing Guidelines ("U.S.S.G."), based on an offense level of 29 and a criminal history category of II. He claims that because the applicable sentencing range was lowered retroactively by U.S.S.G. Amendment 484, he is entitled to a reduction in his sentence.

The scope of relief available under § 3582(c)(2) is narrow: if, after a defendant is sentenced, the Sentencing Commission subsequently lowers the applicable sentencing range, U.S.S.G. Ch. 5 Part A, the defendant may move for reduction of sentence in accordance with the factors in 18 U.S.C. § 3553(a). § 3582(c)(2). Defendant's offense level of 29 was determined in part by reference to U.S.S.G. § 2D1.1. As Defendant correctly points out, the application notes to § 2D1.1 were amended retroactively by Amendment 484. § 2D1.1 Historical Note; § 1B1.10(c); App. C. Even though Amendment 484 is retroactive, it was enacted November 1,

1993, almost three years before Defendant was sentenced, and thus does not constitute a “sentencing range that has been subsequently lowered.” § 3582(c)(2). The claims in the instant motion, therefore, are not cognizable under § 3582(c)(2). The motion will be denied and this proceeding dismissed.

IT IS THEREFORE ORDERED that Defendant’s motion under 18 U.S.C. § 3582(c)(2) is hereby DENIED, and this proceeding is DISMISSED.


UNITED STATES DISTRICT JUDGE